



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,066	09/09/2003	John O. Phillips	BXD4961/00102-1	9196

7590 01/27/2005

Kenneth J. Whittington  
STEVENS DAVIS MILLER & MOSHER, LLP  
Suite 850  
1615 L Street NW  
Washington, DC 20036

EXAMINER
----------

MARSH, STEVEN M

ART UNIT	PAPER NUMBER
----------	--------------

3632

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/657,066

Applicant(s)

PHILLIPS ET AL.

Examiner

Steven M Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-18 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the second office action for U.S. Application 10/657,066 for a Cup Holder filed by John O. Phillips et al. on September 9, 2003. Claim 10 has been canceled.

#### ***Claim Objections***

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 2 has the same limitations that have been added in Claim 15, which it is dependent upon.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3-7 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant does not disclose a cup holder that has a strip with slidable first and second lengths, as well as a receptacle with a sidewall that includes a tab projecting perpendicularly from the sidewall for engaging a slot in the

Art Unit: 3632

strip. Applicant also fails to disclose a cup holder that has a strip with slidable first and second lengths, and a flange spaced apart from the engagement means and the U-shaped member, and an optional tab protruding from the flange for engaging an optional slot in the strip second portion.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 recites the limitation "the U-shaped member" in lines 10 and 11. There is insufficient antecedent basis for this limitation in the claim. Claim 13 recites the limitation "the first length and second length" in lines 10 and 11. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,819,843 to Nakayama. Nakayama discloses a receptacle (1a) with a strip (1b) extending from the receptacle. There is a means (7) for engaging a rear portion of a seat and a flange (8) consisting of a single layer, extending from the strip and spaced from the engaging means.

***Claim Rejections - 35 USC § 103***

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles et al. in view of Hanson et al. Rowles et al. discloses a cup holder with a receptacle (12) for holding a container. There is a strip (20 and 22) extending from the receptacle with a first portion extending upwardly from the receptacle and a second portion extending horizontally from the first portion. The strip has a first length (22) and a second length (24) slidably joined together for allowing a length of the strip to be slidably adjusted. There is also a means (col. 3, lines 31-50) for providing a friction contact between the first length and second length.

Rowles does not disclose an engaging means that is a U-shaped member. Hanson et al. discloses a cup holder with a holding means (15) and a strip (7) extending from the holding means. There is a U-shaped engaging means (9) for preventing forward and vertical movement of the holder relative to a seat. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a U-shaped engaging member on rear portion of the strip of the cup holder taught by Rowles, as taught by Hanson et al., for the purpose of further limiting movement of the holder with respect to a seat.

Claims 2, 8, 9, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles in view of Hanson et al., and in further view of U.S. Patent 4,779,831 to Anderson. Rowles in view of Hanson et al. fails to disclose the strip first portion and second portion as hinge coupled together about an axis for permitting the receptacle to rotate about the axis. Anderson discloses a receptacle holder (16 and 18)

Art Unit: 3632

with a strip first portion (20 and 22) that extends vertically from the receptacle holder and a strip second portion (30) that extends horizontally from the first portion. The first and second portions are hinge coupled together (32) about an axis and the receptacle could rotate about the axis from a first position to a second position abutting the strip. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a hinge between the first and second portions taught by Rowles in view of Hanson et al., as taught by Anderson, for the purpose of allowing the receptacle to rotate between various positions according to mounting preference.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles in view of Hanson et al., in further view of Anderson, and in further view of Zorich et al. Rowles in view of Hanson et al., and in further view of Anderson does not disclose a receptacle with a sidewall that includes a tab that engages a slot in the strip. Zorich et al. discloses a collapsible beverage holder with a holding portion (18) and a strip (12) extending from the holding portion. The holder is collapsible between first and second positions at hinge portions (28 and 32) and a tab (34) in the holder, holds the holder in a second position through engagement with a slot (20) in the strip. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided tab means on the holding portion (the receptacle) and a slot on the strip portion taught by Rowles in view of Hanson et al., and in further view of Anderson, as taught by Zorich et al., for the purpose of holding hinged folding parts in a second position.

Art Unit: 3632

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles in view of Hanson et al., in further view of Anderson, and in further view of Nakayama. Rowles in view of Hanson et al., and in further view of Anderson discloses an engagement means for engaging the container, but does not disclose a flange spaced apart from the engagement means. Nakayama discloses a cup holder with a flange (32) spaced apart from the engagement means that prevents the holder from moving to the rear of the seat and prevents the cup engaging means from hitting a chair arm as discussed above in the rejection of claim 11. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a flange spaced apart from the holding means taught by Rowles in view of Hanson et al., and in further view of Anderson, as taught by Nakayama, for the purpose of preventing the holding means from abutting against a chair arm.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles in view of Hanson et al., in further view of Anderson, in further view of Nakayama, and in further view of Zorich et al. Rowles in view of Hanson et al., in further view of Anderson, and in further view of Nakayama does not disclose a receptacle with a sidewall that includes a tab that engages a slot in the strip. Zorich et al. discloses a collapsible beverage holder with a holding portion (18) and a strip (12) extending from the holding portion. The holder is collapsible between first and second positions at hinge portions (28 and 32) and a tab (34) in the holder, holds the holder in a second position through engagement with a slot (20) in the strip. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have

Art Unit: 3632

provided tab means on the holding portion (the receptacle) and a slot on the strip portion taught by Rowles in view of Hanson et al., in further view of Anderson, and in further view of Nakayama, as taught by Zorich et al., for the purpose of holding hinged folding parts in a second position.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowles in view of Hanson et al., and in further view of Nakayama. Rowles in view of Hanson et al. does not disclose a flange spaced apart from the engagement means. Nakayama discloses a cup holder with a flange (32) spaced apart from the engagement means that prevents the holder from moving to the rear of the seat and prevents the cup engaging means from hitting a chair arm as discussed above in the rejection of claim 11. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a flange spaced apart from the holding means taught by Rowles in view of Hanson et al., as taught by Nakayama, for the purpose of preventing the holding means from abutting against a chair arm.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Hanson et al. Anderson discloses a receptacle holder (16 and 18) with a strip first portion (20 and 22) that extends vertically from the receptacle holder and a strip second portion (30) that extends horizontally from the first portion. The first and second portions are hinge coupled together (32) about an axis and the receptacle could rotate about the axis from a first position to a second position abutting the strip.

Hanson et al. discloses a cup holder with a holding means (15) and a strip (7) extending from the holding means. There is a U-shaped engaging means (see fig. 4, 19



Art Unit: 3632

and 27) for preventing forward and vertical movement of the holder relative to a mounting object. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a U-shaped engaging member on rear portion of the strip of the cup holder taught by Anderson, as taught by Hanson et al., for the purpose of further limiting movement of the holder with respect to another mounting object.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9 and 11-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3632


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*SM*

Steven M. Marsh

January 22, 2005

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER